

**USDA-FSA-KANSAS CITY COMMODITY OFFICE
SOLICITATION TERMS AND CONDITIONS
FOR CORN SOY BLEND**

TABLE OF CONTENTS

Part 1	Instructions to Offerors	1
Part 2	Solicitation Provisions	1
Section A	KCCO Provisions	1
1.	Eligibility of Offerors	1
2.	Submission of proposals	1
3.	Period of Acceptance of Proposals	2
4.	Evaluation of Proposals	2
Section B	FAR Provisions	3
Section C	AGAR Provisions	4
Part 3	Contract Clauses	5
Section A	KCCO Clauses	5
1.	Definitions	5
2.	Invoice Requirements	6
3.	Regulatory Requirements	6
4.	Order of Precedence	6
5.	Time is of the Essence	7
6.	Domestic Origin	7
7.	Shipment and Delivery	7
8.	Seals on Transportation Conveyances	7
9.	Contractor Expenses	8
Section B	FAR Clauses	8
Section C	AGAR Clauses	13

Part 1 Instructions to Offerors

This solicitation is used for the solicitation of proposals and award of contracts for corn soy blend under foreign food assistance programs administered by the Kansas City Commodity Office (KCCO).

Offerors are required to read the Request For Proposals (RFP), including the Solicitation Terms and Conditions, and USDA Commodity Requirements to understand the solicitation, evaluation, and award process for this acquisition.

The following web sites are being provided to potential offerors to obtain the full text of the applicable Federal Acquisition Regulation (FAR), and the Agriculture Acquisition Regulation (AGAR) provisions and clauses incorporated in the contract:

<http://www.acqnet.gov/far/>

<http://www.usda.gov/procurement/policy/agar.html>

Part 2 Solicitation Provisions

Section A KCCO Provisions

1. Eligibility of Offerors

To be eligible to submit a proposal, the offeror shall demonstrate its ability to meet the prescribed standards specified in the Government's qualification requirements located at <http://www.fsa.usda.gov/daco>. This process will determine that a potential contractor has the quality, fitness, capacity, and experience to satisfactorily perform the proposed work and has demonstrated the requisite trustworthiness. The Government reserves the right to adjust, limit, suspend or rescind any potential contractor who has been deemed qualified and placed on the Government's Qualified Bidders List based on any subsequent information. The Government reserves the right to waive any minor irregularity and/or omission in the information contained in the qualification application that has been submitted.

2. Submission of proposals

- (a) Submit proposals to the office specified in the RFP at or before the exact time specified in the RFP. Submission of proposals by any means other than as specified in the RFP will be determined nonresponsive. Proposals that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.
- (b) For prices submitted using electronic commerce, the offeror is responsible for choosing its own Internet Service Provider (ISP) to transmit, translate, or carry data between the offeror and the Government. The offeror is responsible for the cost of its third-party network. The Government will not be responsible for any failure attributed to the transmission of the prices prior to being accepted and stored on the Government's web server including, but not limited to, the following:
 - (i) Any failure of the offeror's computer hardware or software;
 - (ii) Availability of the ISP;
 - (iii) Delay in transmission due to the speed of the modem;
 - (iv) Delay in transmission due to excessive volume of Internet traffic;

3. Period of Acceptance of Proposals

The offeror agrees to hold the prices in its offer firm through the contract award date and time specified in the RFP.

4. Evaluation of Proposals

The Government will award a contract(s) to the responsible offeror(s) whose proposal(s) conforming to the solicitation will be most advantageous to the Government, price and other factors considered. For the pricing component of a proposal, the Government shall consider the lowest-landed cost to the Government to deliver the products to overseas destination. Line items in proposals for which the Government has not received matching ocean freight offers/indications shall not be considered.

The following technical factors shall be used to evaluate proposals:

A. Factor: Past Performance

The Government shall evaluate proposals on the basis of performance history over the last three years on past or current Government or commercial contracts similar to this Government requirement. Offerors are allowed to submit information on a maximum of five contracts.

Subfactors:

1. Rejections of product—either partial contract or total contract
2. Quality discounts applied to individual orders/Notices to Deliver
3. Late shipping/delivery of individual truck or rail shipments

Offerors shall provide the following information in its proposal:

1. Contract number
2. Date of contract
3. Contracting Agency
4. Point of contact (name and current phone number)
5. Description of commodity provided
6. Number of late deliveries on the contract
7. Number of discounts applied on the contract
8. Rejections, partial or total on the contract
9. Corrective actions taken by offeror

In rating an offeror's past performance, information in the offeror's proposal will be considered along with information relating to the subfactors obtained from other sources, such as USDA. The Government reserves the right to contact any and all references to verify the information provided under the past performance technical factor. If there is no information on past contract performance of an offeror or past contract performance is not available, the offeror will not be evaluated favorably or unfavorably on this factor. Past performance will be rated as neutral and will be accomplished by assigning the average score of the other competing offerors and evaluating the proposal in accordance with the other stated evaluation criteria.

B. Factor: Quality Control on CSB Production

The Commodity Requirements Document stipulates minimum standards for quality control that contractors shall be required to follow. The Government shall rate on the following quality control subfactors that exceed the minimum standards established by the Commodity Requirements Document.

Subfactors:

1. Testing protocol
2. Lot size
3. Sampling protocol

C. Factor: Management

The Government shall rate this factor by the following subfactors.

Subfactors:

1. Quality Control Management
 - a. Education
 - b. Training
 - c. Years of experience the offeror's quality control manager has in managing the quality control for milled corn products that are fortified with vitamins and minerals.

Each factor is worth either less than or the same as the preceding factor. Each subfactor within each factor is worth either less than or the same as the preceding subfactor.

The evaluation factors other than cost or price, when combined, are significantly more important than cost or price.

Section B FAR Provisions

52.204-8 Annual Representations and Certifications (Jan 2005)

Note: Offerors shall complete this provision using applicable method for submission of proposals as specified in the RFP.

52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29 (Aug 1998)

52.215-1 Instructions to Offerors (Jan 2004)

52.215-5 Facsimile Proposals (Oct 1997)

Telephone number of receiving facsimile equipment is provided in the RFP.

52.216-1 Type of Contract (Apr 1984)

The Government contemplates award of a firm fixed price contract resulting from this solicitation.

(End of provision)

52.232-15 Progress Payments Not Included (Apr 1984)

52.233-2 Service of Protest (Aug 1996)

Location where a protest may be served on the Contracting Officer:
the issuing office as indicated in the RFP.

(Applicable for all contracts expected to exceed the Simplified Acquisition
Threshold of \$100,000.)

52.252-1 Solicitation Provisions Incorporated by Reference (Feb 1998)

This solicitation incorporates one or more solicitation provisions by reference,
with the same force and effect as if they were given in full text. Upon request, the
Contracting Officer will make their full text available. The offeror is cautioned
that the listed provisions may include blocks that must be completed by the
offeror and submitted with its quotation or offer. In lieu of submitting the full text
of those provisions, the offeror may identify the provision by paragraph identifier
and provide the appropriate information with its quotation or offer. Also, the full
text of a solicitation provision may be accessed electronically at these addresses:

<http://www.acqnet.gov/far>

<http://www.usda.gov/procurement/policy/agar.html>

(End of provision)

52.252-3 Alterations in Solicitation (Apr 1984)

Portions of this solicitation are altered as follows:

**52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation
(Feb 1999)**

(Compliance evaluations will be conducted on a post-award basis.)

(Applicable only for contracts exceeding \$10,000,000.)

(End of provision)

Section C AGAR Provisions

452.204-70 Inquiries (Feb 1988)

Inquiries and all correspondence concerning this solicitation should be submitted
in writing to the Contracting Officer. Offerors should contact only the
Contracting Officer issuing the solicitation about any aspect of this requirement
prior to contract award.

452.219-70 Size Standard and NAICS Code Information (Jan 2005)

The North American Industrial Classification System Code(s) and business size
standard(s) describing the products and/or services to be acquired under this
solicitation are listed below:

Contract Line Item: Corn Soy Blend

NAICS Code: 311211
Size Standard: 500

The small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

Part 3 Contract Clauses

Section A KCCO Clauses

1. Definitions

The following definitions are incorporated into the contract.

- (a) “Commodity Credit Corporation (CCC)” means a wholly-owned government corporation within the U.S. Department of Agriculture (USDA).
- (b) “F.a.s. vessel” means free of expense to the Government delivered alongside the ocean vessel and within reach of its loading tackle at the specified port of shipment, or to the USDA -approved warehouse/berth/terminal transload facility as designated by ocean carrier.

Exception: The following f.a.s. delivery points shall be defined as free of expense to the Government delivered free on board the conveyance (truck or railcar) to the USDA -approved warehouse/berth/terminal transload facility as designated by ocean carrier:

f.a.s. Houston, TX (HOUS)

(The ocean carrier shall be responsible to pay all handling costs to unload the conveyance and all associated terminal/port charges.)

- (c) “Intermodal plant” means delivered free of expense to the Government loaded on board the transportation conveyance obtained by the vendor at locations where steamship lines have established and published intermodal rates from vendor plant to foreign destination.
- (d) “Intermodal bridge” means delivered free of expense to the Government delivered in transportation conveyance obtained by the vendor to locations where steamship lines have established and published intermodal rates from a U.S. point to a U.S. port and a foreign destination.
- (e) “Intermodal bridge-port for the Great Lakes” means delivered free of expense to the Government delivered in transportation conveyance obtained by the vendor to marine cargo-handling facilities capable of loading ocean-going vessels at a Great Lakes port, as well as loading ocean-going conveyances such as barges and container vans.

- (f) "Lowest-landed cost," means the lowest combined cost of commodity and ocean freight to deliver a commodity to an overseas destination while adhering to cargo preference statutes and regulations.
- (g) "Notice to Deliver," Form KC-269, means the contracted shipping or delivery instructions issued by the Government and mailed to the contractor.
- (h) "Shipment Information Log," Form KC-366, means the accounting of the contracted shipping or delivery of commodities for overages, shortages and/or damage.

2. Invoice Requirements

When the total quantity to be invoiced includes a fraction of a pound, the fraction should be omitted if less than one-half pound and raised to the next full pound if one-half pound or more. Only whole pounds should be shown on the invoice.

For f.a.s. vessel, intermodal plant, intermodal bridge, and intermodal bridge-port point for the Great Lakes shipments

The contractor shall submit an original invoice or the KC-269, Vendor or Processor Invoice (reverse of Notice to Deliver), to the address designated in the contract to receive invoices. An invoice must include:

- (i) Name and address of the contractor;
- (ii) Invoice date and number;
- (iii) Contract number and Notice to Deliver (N/D) number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Terms of any discount for prompt payment offered;
- (vi) Commercial Bill of Lading;
- (vii) Copy of FGIS Official (original) inspection certificates, if required;
- (viii) Statement from the contractor certifying fumigation of product, if required;
- (ix) Copies of Certificate of Analysis (COA), if required. If product delivered falls within the quality discount table as outlined in the commodity specifications, those factors must be identified by an asterisk on the copies of the COA;
- (x) Proof of delivery as evidenced by either a copy of the Bill of Lading or a commercial receipt signed and dated by the consignee.

3. Regulatory Requirements

The commodity shall conform to the applicable provisions of the "Federal Food, Drug, and Cosmetic Act" (21 U.S.C. 301 et. seq.), as amended, and the relevant regulations. The contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations related to its performance under this contract.

4. Order of Precedence

Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Request for Proposals
- (b) Solicitation provisions
- (c) Contract clauses
- (d) USDA Commodity Requirements
- (e) Other documents, exhibits, and attachments

5. Time is of the Essence

Time is of the essence in the performance of this contract. Performance shall be strictly in accordance with the applicable quantities and schedules set forth in this contract. Whenever it appears the contractor will not meet the performance schedule, the contractor shall immediately notify the Government of the reason and length of the delay. The contractor shall make every effort to avoid or minimize the delay to the maximum extent possible including the expenditure of premium time and most expeditious transportation. Any additional cost caused by these requirements shall be borne by the contractor. If the contractor is unable to meet the required performance schedules for any reason, other than a change directed by the Government, the Government shall have the option to cancel this contract, or fill such contract or any portion thereof, from sources other than the contractor and to reduce the contractor's contract quantities accordingly at no increase in unit price, without any penalty to the Government. This condition shall not limit the Government's rights under the default provision contained herein.

6. Domestic Origin

The end product delivered must be entirely produced in the United States from commodities and packaging produced in the United States. Produced in the United States means manufactured, processed, mined, harvested, or otherwise prepared for sale or distribution, from components originating in the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as the United States). Components originating in the United States that have been exported, and subsequently imported back into the United States, will not be considered as having been produced in the United States. The contractor will maintain records evidencing product origin and will make such records available for review by the Government. The domestic origin requirement for Vitamin A (Retinol Palmitate) and Vitamin D used to fortify commodities is waived as these vitamins are not entirely produced from domestic origin ingredients.

7. Shipment and Delivery

- (a) The Notify Party shown on the KC-269, Notice to Deliver (N/D), must be contacted prior to shipment.
- (b) The contractor must submit form KC-366, Shipment Information Log, for each N/D, annotating on the form when the shipment is complete for each N/D. The form is available at <http://www.fsa.usda.gov/daco/Forms/kc366.pdf>. The KC-366 is to be faxed as early as possible each Tuesday and Thursday, until shipping is complete, to both Export Operations Division, KCCO (facsimile number 816-926-6767) and the Notify Party(s) on the N/D. Contractors must notify the contracting officer in advance if shipments will not be made by the final shipment date under the contract.

8. Seals on Transportation Conveyances

Suppliers of commodities, products and/or services shall be responsible for placing a seal(s) on all doors of each transportation conveyance upon completion of loading or servicing. The seal number(s) shall be entered on the bill of lading, which must be signed or acknowledged by the carrier or its agent. Seals shall be sequentially numbered, barrier-type and meet the American Society for Testing and Materials (ASTM) Standards. Seals shall be 1/8-inch diameter cable, high security bolt, or equivalent. Information on ASTM Standards may be found at <http://www.astm.org>.

9. Contractor Expenses

Unless stipulated otherwise in the RFP, all expenses incurred including but not limited to testing, analysis, fumigation, and certification requirements shall be the responsibility of the contractor.

Section B FAR Clauses

52.202-1 Definitions (Jul 2004)

52.203-3 Gratuities (Apr 1984)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-5 Covenant Against Contingent Fees (Apr 1984)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-6 Restrictions on Subcontractor Sales to the Government (Jul 1995)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-7 Anti-Kickback Procedures (Jul 1995)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Jun 2003)

(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

52.204-7 Central Contractor Registration (Oct 2003)

- 52.209-1 Qualification Requirements (Feb 1995)**
Government contact for information on the standards for qualification: Kansas City Commodity Office at <http://www.fsa.usda.gov/daco/qualifications.htm>.
- 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Jan 2005)**
(Applicable for contracts exceeding \$25,000.)
- 52.211-11 Liquidated Damages- Supplies, Services, or Research and Development (Sep 2000)**
- (a) If the Contractor fails to ship the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of \$0.10 per hundredweight per calendar day of delay up to a maximum of 45 days, except where mutually agreed upon between contractor and the Government.
 - (b) If the Government terminates this contract in whole or in part under the Default—Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains shipment/delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.
 - (c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.
- 52.211-16 Variation in Quantity (Apr 1984)**
(b) The permissible variation shall be limited to:
five percent decrease
This decrease shall apply to the total contract quantity.
- 52.215-2 Audit and Records - Negotiation (June 1999)**
- 52.215-14 Integrity of Unit Prices (Oct 1997)**
- 52.219-7 Notice of Partial Small Business Set-Aside (Jun 2003)**
(Applicable when the RFP stipulates the procurement is a partial small business set-aside.)
- 52.219-8 Utilization of Small Business Concerns (May 2004)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)
- 52.219-9 Small Business Subcontracting Plan (Jan 2002) Alternate 1 (Oct 2001)**
(Applicable for contracts exceeding \$500,000.)

- 52.219-14 Limitations on Subcontracting (Dec 1996)**
(Applicable to any portion of the requirement that is set aside for small business and the contract amount is expected to exceed \$100,000; and is applicable to all contracts awarded under the 8(a) program.)
- 52.219-16 Liquidated Damages- Subcontracting Plan (Jan 1999)**
- 52.222-1 Notice to the Government of Labor Disputes (Feb 1997)**
- 52.222-3 Convict Labor (Jun 2003)**
(Applicable for contracts exceeding \$2,500.)
- 52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (Sep 2000)**
(Applicable for contracts exceeding \$100,000.)
- 52.222-21 Prohibition of Segregated Facilities (Feb 1999)**
- 52.222-26 Equal Opportunity (Apr 2002)**
- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)**
(Applicable for contracts exceeding \$25,000.)
- 52.222-36 Affirmative Action for Workers with Disabilities (Jun 1998)**
(Applicable for contracts exceeding \$10,000.)
- 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)**
- 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)**
(Applicable for all contracts expected to exceed the Simplified Acquisition Threshold of \$100,000.)
- 52.223-6 Drug-Free Workplace (May 2001)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000 and to all contracts awarded to an individual.)
- 52.223-14 Toxic Chemical Release Reporting (Aug 2003)**
See EPA's web site at <http://www.epa.gov/tri> for guidance.
(Applicable for contracts exceeding \$100,000.)
- 52.229-3 Federal, State, and Local Taxes (Apr 2003)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)

- 52.232-1 Payments (Apr 1984)**
(As used in this clause, "partial deliveries" means "Notices to Deliver"-see definitions.)
- 52.232-8 Discounts for Prompt Payment (Feb 2002)**
- 52.232-11 Extras (Apr 1984)**
- 52.232-17 Interest (June 1996)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)
- 52.232-23 Assignment of Claims (Jan 1986)**

USDA forms CCC-251 (Notice of Assignment) and CCC-252 (Instrument of Assignment) may be obtained at:
<http://www.fsa.usda.gov/daco/procure#Forms>
or the contractor may use its own forms provided the forms are essentially consistent with CCC-251 and CCC-252 in content.
- 52.232-25 Prompt Payment (Oct 2003)**
- 52.232-33 Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003)**
- 52.233-1 Disputes (Jul 2002)**
- 52.233-3 Protest after Award (Aug 1996)**
- 52.233-4 Applicable Law for Breach of Contract Claim (Oct 2004)**
- 52.242-13 Bankruptcy (Jul 1995)**
(Applicable for contracts exceeding the Simplified Acquisition Threshold of \$100,000.)
- 52.242-15 Stop-Work Order (Aug 1989)**
- 52.242-17 Government Delay of Work (Apr 1984)**
- 52.243-1 Changes-Fixed Price (Aug 1987)**
- 52.244-6 Subcontracts for Commercial Items (Dec 2004)**
- 52.246-2 Inspection of Supplies- Fixed-Price (Aug 1996)**
- 52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments (Apr 1984)**

52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form) (Apr 1984)
(Applicable for contracts of \$100,000 or less.)

52.249-2 Termination for Convenience of the Government (Fixed-Price) (May 2004)
(Applicable for contracts exceeding \$100,000.)

52.249-8 Default (Fixed-Price Supply and Service) (Apr 1984)

52.252-2 Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://www.acqnet.gov/far/>

<http://www.usda.gov/procurement/policy/agar.html>

(End of clause)

52.252-4 Alterations in Contract (Apr 1984)

Portions of this contract are altered as follows:

52.246-16 Responsibility for Supplies (Apr 1984)

- (b)(3) Delivery of the supplies when placed alongside ocean vessel and within reach of its loading tackle or to the USDA-approved warehouse/berth/terminal/transload facility as designated by the ocean carrier, if transportation is f.a.s. vessel;

Exception: For those f.a.s. vessel destinations excepted in subsection 3.A.1.(c) delivery of the supplies free on board the conveyance (truck or railcar) at the USDA-approved warehouse/berth/terminal/transload facility as designated by the ocean carrier.

- (4) Delivery of the supplies when placed on board the conveyance at named point of origin, if transportation is Intermodal Plant;

- (5) Delivery of the supplies to the carrier on rail cars, trucks, or carrier-supplied conveyance at the named bridge point, if transportation is Intermodal Bridge;

- (6) Delivery of the supplies to the carrier on rail cars, trucks, or carrier-supplied conveyance at the named Great Lakes bridge-port point, if transportation is Intermodal Bridge-Port for the Great Lakes.

(End of clause)

52.253-1 Computer Generated Forms (Jan 1991)

Section C AGAR Clauses

452.211-74 Period of Performance (Feb 1988)

The period of performance of this contract is stipulated in the RFP.